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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,201	04/02/2002	Michael Chopp	1059.00063	4921

7590

11/19/2003

Kenneth I Kohn  
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Suite 410  
30500 Northwestern Highway  
Farmington Hills, MI 48334

EXAMINER
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JAGOE, DONNA A

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 11/19/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/018,201

Applicant(s)

CHOPP ET AL.

Examiner

Donna Jagoe

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Claims 1-8 are pending in this application.***

***Response to Amendment***

Objection of claims 7 and 8 is no longer maintained in view of the amendment.

The Examiner is in agreement with the persuasive remarks submitted concerning the outstanding 35 USC 112 1<sup>st</sup> paragraph rejection in paper number 8 in view of which the rejection is hereby withdrawn.

***Response to Arguments***

Applicant's arguments filed July 18, 2003 have been fully considered but they are not persuasive.

1. The rejection made in paper number 8 over Moskowitz '940 under 35 U.S.C. §102(b) is maintained and is hereby repeated.

Applicant asserts that while the therapeutic approach of Moskowitz is the reduction of cerebral infarction by lack of blood flow in the brain, the instant application induces brain remodeling and restoring neurological function. The examiner is not in agreement with this assertion. Since the same agent is being administered under the same conditions in the prior art as in the instant claims, the general promotion of neurogenesis must inevitably occur in each case. The action of the nitric oxide donor would inherently restore neurologic function in addition to increasing the blood flow to reduce the size of the infarct. If applicant is getting results that differ from the prior art by administering the same compound to the same population, it must be due to some

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limitation that is not in the claims. Regarding the timing of the administration of the compositions of Moskowitz, it is stated that the compounds can be administered before, during or after a stroke. Additionally, applicant asserts that the compounds of the instant application are drawn to methods of remodeling and restoring neurological function independent of the volume of the infarction. On page 5, lines 20-25 of the instant application, applicant defines "promoting neurogenesis" as neural growth being promoted or enhanced. This includes new neuronal growth, enhanced growth of existing neurons as well as growth and proliferation of parenchymal cells and cells that promote tissue plasticity. The following is a definition for parenchyma from Stedman's medical dictionary:

1. The distinguishing or specific cells of a gland or organ, contained in and supported by the connective tissue framework, or stroma. 2. The endoplasm of a protozoan cell. [G. anything poured in beside, fr. parencheo, 1 to pour in beside] p. glandulae thyroideae [TA] SYN: p. of thyroid gland. p. prostatae [TA] SYN: p. of prostate. p. of prostate [TA] the basis cellular tissue (substance) composing the prostate. SYN: p. prostatae [TA] . p. testis [TA] SYN: p. of testis. p. of testis [TA] the basic cellular tissue substance composing the testis, consisting of

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the seminiferous tubules and interstitial cells (Leydig and Sertoli cells) located within the lobules. SYN: p. testis [TA] . p. of thyroid gland [TA] the basic cellular tissue (substance) composing the thyroid gland, organized as follicles. SYN: p. glandulae thyroideae

It appears that applicant's definition for promoting neurogenesis does not necessarily mean neurogenesis, but rather, can be defined by proliferation of parenchymal cells (that are not neurons).

2. The rejection of claim 6 made in paper number 8 over Bredt et al is maintained and is hereby repeated. Applicant appears to object to the absence of a secondary reference for the outstanding 35 U.S.C. 103(a) rejection. The rejection was made a 103(a) rejection because the prior art (Bredt et al.) does not specifically teach production of neurons. However, relying on applicants disclosure, the definition of neurogenesis includes synaptogenesis. Bredt et al. teach NO donors potentiate synaptic transmission. A secondary reference is not needed because all elements are present. It is merely a difference of nomenclature. Regarding the assertion that synaptogenesis is the formation of new synapses, this is not defined in the instant specification.

Regarding applicants assertion that there are additional claims that have not been rejected, in summary,

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Claims 1-8 are pending in this application.

Claims 1-5 and 7-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Moskowitz '940.

Claim 6 is rejected under 35 U.S.C. 103(c) as being obvious over Bredt et al.

All art rejections are maintained and hereby repeated.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Correspondence***

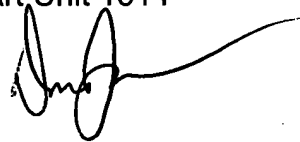
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donna Jagoe whose telephone number is (703) 306-

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5826. The examiner can normally be reached on Monday through Friday from 8:00 A.M. - 4:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel can be reached on (703) 308-4725. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Donna Jagoe  
Patent Examiner  
Art Unit 1614

A handwritten signature in black ink, appearing to read 'Donna Jagoe', with a long horizontal flourish extending to the right.

Frederick Krass  
Primary Examiner  
Art Unit 1614

A handwritten signature in black ink, appearing to read 'Frederick Krass', with a long horizontal flourish extending to the right.